

Exhibit D



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July 12, 2021

In re: Diisocyanates Antitrust Litigation

Dear Counsel:

Thank you for arranging the expert conference last Friday. I found it extremely helpful. As discussed at the conclusion of the conference, I would like to take this opportunity to lay out a proposal that could shape the parties' discussions with the goal of achieving an agreed resolution to the outstanding issues. The proposal is necessarily general, both because I am not qualified to dictate technical specifications and because I want to leave the parties flexibility to negotiate the details.

I will lay out the proposal first and then provide some of the rationale for my approach.

Proposal

A. "Stopping" Point. (This is perhaps more accurately characterized as a "pause" point, since the parties appear to acknowledge that further iterations may be conducted based on analysis conducted when the search is paused.)

1. The defendants are permitted to pause at any point in the search, based on whatever criteria they choose. Accordingly, if they wish to do so based

on the relation between a prevalence statistic calculated at the outset and the number of relevant documents found, that is their prerogative.

2. At the point that a defendant pauses its search, it shall record by Bates number all relevant documents obtained from the last two batches searched, identify which of the batches these documents were found in, and identify the number of relevant but privileged documents withheld with respect to each of the two batches.

B. Validation.

1. If the parties agree on search terms, the defendants need calculate the recall rate only for the segment of the search conducted through TAR.

2. If, on the other hand, the parties fail to agree on search terms, the defendants shall calculate the recall rate that incorporates both the search term and TAR segments.

3. In neither event, are the defendants required to account for potential human error in calculating the recall rate.

C. Closure.

1. At the point where a defendant chooses to cease its search, it shall provide to the plaintiffs (a) the information contained in A.2. above, and (b) the recall rate and all calculations used to derive that rate.

2. If the plaintiffs agree, the defendant may conclude its search at that point.

3. If the plaintiffs do not agree, the parties shall, after meeting and conferring, present their dispute to a Special Master for resolution.¹ The Special Master may (a) permit the defendant to terminate the search or (b) require the defendant to review one or more additional batches, with or without conditions that

¹ The parties would be free to choose a Special Master other than the undersigned to serve this function.

could include the shifting of costs incurred in connection with such further reviews.

4. In determining whether to permit a defendant to terminate a search, the Special Master shall apply a rebuttable presumption that a 70% recall rate demonstrates a reasonable search.

Rationale

Several principles inform the proposal outlined above:

- The parties' "agreement" to a 70% recall rate did not reflect a complete meeting of the minds. While the defendants understood this benchmark to apply only to the TAR portion of the search, the plaintiffs understood it to apply either to (a) the TAR and search term portions together, or (b) to TAR alone, but only after search terms had been agreed to, a condition that has not yet been met.
- Although auditing of human error in search is common in quality control measures that a party applies to its own search but does not share, it is rarely part of a validation protocol. Accordingly, it has been omitted from the proposal here.
- The goal of establishing immutable criteria before a search has been commenced incorporates trade-offs. On one hand, it creates certainty and limits the risk of subsequent disputes with their attendant costs. On the other hand, as the experience of this case shows, it may increase up front disagreements (and attendant costs), as the parties find it difficult to negotiate an agreement in an information vacuum. To be sure, the defendants' concern that anything short of rigid criteria will leave the door open to subsequent disputes is a legitimate one. But, as a search progresses, the availability of greater information will likely make those disputes less frequent and more amenable to resolution. It is easier for parties to argue in the abstract about what might happen than it is to argue about what actually happened. The proposal therefore allows some flexibility in determining when to conclude a search based upon what the data from the search show.

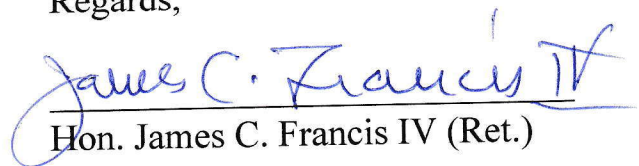
Conclusion

I hope this proposal will be useful in helping the parties reach agreement on the outstanding issues. That would, I suspect, be a more desirable outcome for both sides than leaving these issues for determination by the court.

Please let me know at your earliest convenience whether the parties collectively believe that we should be discussing a negotiated resolution at the upcoming conference, as that will impact how we set up the remote session.

I look forward to speaking with you later this week.

Regards,


Hon. James C. Francis IV (Ret.)

PROOF OF SERVICE BY E-Mail

Re: In re: Diisocyanates Antitrust Litigation
Reference No. 1425034760

I, Katherine Robinson, not a party to the within action, hereby declare that on July 12, 2021, I served the attached LETTER TO COUNSEL DATED JULY 12, 2021 on the parties in the within action by electronic mail at New York, NEW YORK, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on July 12, 2021.

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